ORIGINAL

RECEIVED

OCT 2 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128
Policies and Rules Concerning Operator Services Access and Pay Telephone Compensation	)	CC Docket No. 91-35

DOCKET FILE COPY ORIGINAL

AT&T PETITION FOR RECONSIDERATION AND CLARIFICATION

Mark C. Rosenblum
Peter H. Jacoby
Richard H. Rubin

Its Attorneys

Room 3252I3
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-4481

October 21, 1996

No. of Copies rec'd 0+4
List A B C D E

TABLE OF CONTENTS

Summary

The per-call compensation rules adopted in the Order lack factual support in the record, are inconsistent with the Commission's recent holdings in the Local Competition Order and are illogical and inconsistent with economic theory. Creation of a TSLRIC (or other forward-looking cost)-based system is the only way to assure that per-call compensation is "fair" to PSPs, carriers and consumers alike. Moreover, the record specifically shows that the use of a "market-based" local coin rate is an excessive and unsuitable surrogate for per-call compensation, that there is no likelihood that there would ever be an effective competitive "market" rate for local coin calls, and that it is impossible to develop a single "market-based" per-call compensation rate for carriers that applies equally to access code and 800 subscriber calls. Further, the Order's permanent rules for per-call compensation are unadministrable and will subject carriers and consumers to significant possibilities of abuse. Therefore, the Commission should reconsider its Order and adopt a per-call compensation rate that is based upon TSLRIC (or other forward-looking) costs.

The Commission must also revise its interim compensation rules to require that LECs and smaller IXCs participate in compensating PSPs, because the rules in the Order are contrary to the statute, arbitrary and discriminatory against larger IXCs. In addition, carriers should not be required to pay the exorbitant amount of $45.85 in interim compensation for semi-public phones and low-revenue payphones making less than $4 per day.

If the Commission eschews a cost-based compensation system in favor of a "market-based" system it must change the Order's payment rules, because no "market" system could possibly function if consumers -- the ultimate payers of per-call compensation -- are not clearly apprised of the costs. Therefore, the Commission should either require a "coin in the

box" payment from all payphone users for all calls or adopt a payphone usage charge which establishes a direct relationship between PSPs and customers and involves carriers only as intermediaries. In all events, facilities-based carriers should not be required to be financially responsible for the payphone compensation obligations of resellers. Rather, facilities-based carriers should only be required to give resellers the information they need to make the payments themselves.

The Commission should also clarify that the Order does not affect any contract between a carrier and a location owner, regardless of when it was executed, and that any BOC contracts with location owners which affect the selection of a primary interLATA carrier and are executed before approval of the BOC's CEI plan are void. The Commission should further clarify that PSPs must pass payphone information digits to carriers as a precondition for receiving per-call compensation; that the rules in the Order supersede state dial-around compensation requirements; and that LECs must reduce their CCL rates in an amount equal to the Subscriber Line Charges they receive from their affiliated payphone entities.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	))))	CC Docket No. 96-128
Policies and Rules Concerning Operator Services Access and Pay Telephone Compensation	)))	CC Docket No. 91-35

AT&T PETITION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to Section 1.429 of the Commission's Rules, AT&T Corp. ("AT&T") hereby petitions the Commission to reconsider and clarify the portions of the September 20, 1996 Report and Order in this proceeding ("Order") which are discussed below.

Introduction and Summary

The Order implements Section 276 of the Communications Act ("Act"), which requires, among other things, that the Commission establish rules to: (1) ensure payphone service providers ("PSPs") are fairly compensated for all completed calls placed from their payphones; and (2) end the access and other subsidies that have previously supported LEC payphone operations.

The Order unjustifiably rejects the cost-based approach to "fair" per-call compensation that the Commission had already relied upon in similar contexts and that was proposed in the Commission's Notice here. Instead, the Order adopts rules that require larger interexchange carriers ("IXCs") -- but not LECs or smaller IXCs -- to pay eligible PSPs interim compensation of $45.85 per phone per month for allowing customers to originate toll-free ("800 subscriber") and access code calls at payphones, without regard to the PSPs' actual costs of that service. Such compensation is payable to independent payphone providers effective later this year and to LEC payphone operators after they eliminate their existing payphone subsidies. The Order also requires carriers to establish per-call tracking systems for 800 subscriber and access code calls from payphones within one year, and it requires them to pay per-call compensation of $.35 for the period from October 1, 1997 until permanent rules take effect one year later.

The Order further requires state commissions to end all price regulation of local coin calls, allowing PSPs to set prices for local coin calls at a "market" rate during the second phase of the process, which begins in October, 1997. Effective October 1, 1998, the rules provide that PSPs will be entitled, in the absence of an agreement, to per-call compensation in an amount equal to the local coin rate "at the payphone in question."

The Order's rules regarding the amount of per-call compensation lack foundation in fact, logic and economic theory, all of which require that per-call compensation be cost-based. In particular, the Order fails to reconcile the Commission's sound application of economic principles in its Local Competition Order[1] with the conclusions reached here, and it does not explain why a TSLRIC-based (or other forward-looking cost-based) compensation system would be "unfair" to all the affected parties, which include not only PSPs but also the

1 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, released August 8, 1996 ("Local Competition Order").

carriers and consumers who must ultimately pay such compensation. As a result, the rules adopted in the Order create a multi-billion dollar windfall for payphone operators over the next several years.[2] If AT&T assessed a $.35 per-call surcharge on the consumers who pay for calling card or operator services calls from payphones, it would raise their rates by an average of about 11.5%. In addition, if AT&T were able to track toll-free calls from specific payphones and impose a $.35 per-call surcharge on 800 subscribers who receive calls from payphones it would, on average, nearly double those subscribers' costs for receiving such calls. Moreover, during 1997, in order to recover the additional payphone costs, AT&T estimates it would have to increase the rates for 800 subscribers between 7 and 10%. AT&T's preliminary estimates also indicate that the per-call compensation obligations of the Order will require it to absorb hundreds of millions of dollars in increased costs annually, net of any access savings. Strikingly, the Order contains no analysis of any significant customer benefits that would result from these rules, or why it is "fair" to require carriers and consumers to foot the bill for the new subsidies being extended to PSPs.

The record also directly refutes the Order's conclusion that local coin rates are an appropriate surrogate for a per-call compensation rate for 800 subscriber and access code calls, which do not require the use of coins. In this regard, the Order fails even to reference --

---

2 Notwithstanding the RBOC Coalition's claim that a $.35 per-call compensation charge would not be "revenue neutral" to them (see August 12, 1996 letter from Ben G. Almond to William F. Caton, CC Docket No. 96-128), a correct view of the RBOCs' analysis shows that the Coalition members alone would benefit from the Order's rules by over $500 million per year (see October 16, 1996 letter from R. Gerard Salemme to William F. Caton, CC Docket No. 96-128).

much less account for -- record evidence that clearly demonstrates the fundamental flaws in its analysis.[3] There is also no basis for the Order's assumption that "fair" compensation can be "market based" in the payphone market.

Although Section 276 requires compensation to be paid on all calls, not just interLATA calls, the Order arbitrarily excludes LECs and smaller IXCs from any obligation to pay interim compensation. The Order's decision to excuse LECs -- who receive billions of dollars annually in intraLATA toll and intraLATA 800 revenues -- as well as smaller IXCs from participation in the interim flat-rate compensation process is contrary to the statute, arbitrary and discriminatory against the IXCs whom the Order requires to pay compensation on behalf of all carriers. In addition, given the excessive amount of the interim compensation, it is all the more arbitrary and unreasonable to include the hundreds of thousands of admittedly low volume public interest and semi-public payphones within the scope of the obligation.

To the extent that the Commission continues to eschew a cost-based compensation system and bestow excessive "compensation" amounts on PSPs, the Commission should at least assure that the consumers who must ultimately bear the cost of the compensation system have the opportunity to know the added costs they are required to pay. The best way to do this is to assess a "caller pays/coin-in-the-box" system of compensation, or a payphone station usage charge modeled on the system applied to intraLATA access code calls in California. Under such a system, the parties ultimately responsible for paying the

---

3 In addition, the Order fails to recognize that a per-call compensation system based upon the local coin rates charged "at the payphone in question" is subject to substantial abuse and will be unadministrable.

payphone charge are the customers who pay for services originated at payphones. Carriers are involved in the system only as collection agents for PSPs, but the costs of payphone use would not be treated as direct costs of their service. Instead, payphone use charges are collected from customers and passed on to PSPs, net of a reasonable collection and remittance charge.

In addition, several points in the Order require clarification. In particular, in light of the rules established in the Order regarding BOCs' right to negotiate with location owners regarding the interLATA PIC, the Commission should clarify (i) that the Order does not affect any agreement carriers may have negotiated directly with location owners regarding the selection of an interLATA PIC and (ii) that all BOC contracts with location owners that are executed prior to the effective date of a BOC's CEI plan and that reference interLATA carrier selection are void and unenforceable. The Commission should also clarify that PSPs must pass payphone information digits in order to be eligible for per-call compensation; that the Order supersedes state rules regarding dial-around compensation; and that LECs must reduce their CCL rates in an amount equal to the additional Subscriber Line Charges they will receive from their payphone businesses.

Argument

I. The Per-Call Compensation Amount Established in the Order is Inconsistent with the Commission's Local Competition Order, Contrary to Record Evidence, and Based upon the False Premise that There Could Be an Effective "Market" for 800 Subscriber and Access Code Calls from Payphones.

A. The Order's Rejection of a TSLRIC-Based Compensation System is Inconsistent with Economic Logic and the Commission's Local Competition Order, and it is Affirmatively Unfair to Carriers and Consumers.

Consistent with its prior practice in connection with "dial-around" access code calls from independent payphones, the Commission's Notice reasonably proposed a cost-based method for determining per-call compensation.[4] However, the Order abruptly shifts focus and rejects all of the commenters' cost-based proposals for per-call compensation, including AT&T's proposal, which was premised upon exactly the same type of long run incremental cost analysis the Commission found appropriate in its Local Competition Order. Citing to the Local Competition Order, the instant Order (¶ 68) rejects the use of a "purely incremental cost standard," stating that such a standard "could leave PSPs without fair compensation for certain types of payphone calls, because such a standard would not permit the PSP to recover a reasonable share of the joint and common costs associated with those calls." This conclusion, however, is contradicted by the Commission's own correct holdings in the Local Competition proceeding. Moreover, the Order mischaracterizes AT&T's Total Service Long Run Incremental Cost ("TSLRIC")-based proposal, which would specifically have allowed PSPs to recover all of their appropriate costs, including a proportionate share of any joint and common costs.

The Local Competition Order (¶ 677) defines the term "long run," in the context of the term "long run incremental cost," to be "a period long enough so that all of a firm's costs become variable or avoidable," and it states that TSLRIC "includes the costs of shared facilities and operations that are used by [the service in question] (emphasis added)."[5]

[4] See Notice, ¶ 38 (PSPs "should be compensated for their costs"); Order, ¶ 24.

[5] The assumption that, under TSLRIC, all costs become variable addresses APCC's concern (APCC Comments, p. 14) that per-call compensation should cover a portion of PSPs' fixed costs. Moreover, contrary to the RBOC Coalition's (Comments, p. 13) and APCC's (Reply, p. 30) views, efficient TSLRIC costs are the proper economic measure for PSPs to consider in deciding whether to install an additional payphone, and for the Commission

(footnote continued on following page)

Even more fundamentally, the Local Competition Order (¶ 679) states that a "pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market." The instant Order fails to reconcile these holdings with its rejection of a TSLRIC-based compensation system for PSPs.

AT&T's Reply (pp. 8-9) provided specific information on the costs relevant to the provision of payphone access for non-coin calls, including the costs of the installation and maintenance of the payphone set (without coin features), the additional costs associated with the Subscriber Line Charge, and the blocking and screening functions that are used to support the provision of payphone services.[6] These include all of the costs associated with a PSP's provision of payphone access to carriers for 800 subscriber and access code calls, and thus, by definition, include all relevant joint and common costs. The Order, however, fails to explain -- or even address -- why this proposal would undercompensate PSPs for any specific joint and common cost.[7] In addition, the Order fails to explain why a properly calculated

(footnote continued from previous page)

to use in setting a compensation amount. Any other measure rewards PSPs -- and harms carriers and consumers -- for inefficiencies.

6 The Order (¶ 42) states that AT&T proposed an "unspecified" compensation amount. This is only because the record showed some variance in the average total number of calls placed from private and LEC-owned payphones. Using the figures in the record, the range of per-call compensation resulting from AT&T's analysis would be between \$.0595 per call (average monthly cost of \$41.66 per line ÷ 700 calls per month) and \$.1073 per call (average monthly cost of \$53.66 ÷ 500 calls per month) (see AT&T Reply, pp. 8-9).

7 AT&T's proposal (AT&T Comments, pp. 6-9; see also AT&T Reply, pp. 13-14) excluded basic payphone line costs for the sound reason that carriers are already obliged to pay the LEC for the use of such lines through originating access charges. However, even if the cost of the basic payphone line were added to PSP costs in this analysis, it would

(footnote continued on following page)

TSLRIC-based compensation rate (whether based on AT&T's analysis or anyone else's) is not "fair" compensation for PSPs, carriers and consumers alike. Such an analysis is especially critical in light of the facts described below, which show that competition in the payphone market -- to the extent it exists -- affects only the relationships among PSPs, location owners and presubscribed carriers.[8] Carriers that provide non-presubscribed services from payphones and customers who pay for the use of those phones simply do not have the same opportunities for competition. Accordingly, TSLRIC is the only "fair" method for determining per-call compensation.

B. The Order Improperly Ignores Record Evidence that Local Coin Rates Are an Excessive and Inappropriate Surrogate for Per-Call Compensation.

Instead of adopting a cost-based system for per-call compensation, the Order (¶ 70) concludes that "the appropriate per-call compensation amount ultimately is the amount the particular payphone charges for a local coin call." This conclusion is based upon the Order's statement that "if a rate is compensatory for local coin calls, then it is an appropriate

---

(footnote continued from previous page)

only increase the PSPs' per-call costs by about $.06-.07 per call. AT&T's proposal also excluded current PSP commissions from the analysis, because: (i) the provision of payphone access for 800 subscriber and access code calls has no impact on PSPs' current obligations to pay commissions to location owners, and (ii) guaranteeing the recovery of commissions through per-call compensation would only lead to a spiraling of commission payments to location owners -- and increased costs for carriers and consumers.

8 The PSPs' arguments favoring a market approach to "fair" compensation ignores the fact that the concept of fairness must be applied to <u>all</u> affected parties, including carriers and consumers. <u>See</u> Section 2(2) of the Telephone Operator Services Consumer Improvement Act of 1990 ("TOCSIA"), PL 101-435 (stating that the safeguards of that statute were intended "to assure fairness <u>for consumers and service providers alike</u>" (emphasis added)).

compensation amount for other calls as well, because the cost of originating the various types of payphone calls are similar." This rationale -- which leads to a 650% increase in the compensation payable to independent payphone providers ("IPPs") -- is directly refuted by undisputed record evidence that was completely ignored in the Order. Moreover, the Order imposes this huge increase even though the record suggests that IPPs are already receiving sufficient total compensation from their payphones, because substantial premiums are being paid for the purchase of existing payphone placements.[9]

Sprint's Comments (p. 9) and AT&T's Reply (pp. 12-14) demonstrated at length why a PSP's costs for providing local coin calls are significantly greater than a PSP's costs to provide customers with the ability to place subscriber 800 and access code calls, which do not require the use of coins.[10] APCC's Comments (n.15) directly support this view, recognizing that "[a]rguably, the local coin rate should be higher than the rate for a non-sent paid call because of the usage and coin collection costs typically associated with local coin calling (emphasis in original)."[11]

---

9 See, e.g., CPA, n.17; AT&T Reply, n.7. See also Georgia Public Communications Association Reply, p. 14 (U S WEST purchase of payphone locations). The record also shows that the current $6.00 per month dial-around compensation requirement for independent payphones, together with commission payments on 0+ calls from presubscribed carriers, support claimed IPP shortfalls for all types of calls -- principally the local coin calls which make up the vast majority of all calls from payphones and will be allowed to rise to a market rate.

10 In contrast, the costs associated with the non-coin aspects of all calls from payphones, including coin calls, are identical.

11 For example, compare Peoples Telephone's average monthly "Field Service/Collection" costs of $44.20 for its coin phones, which it describes as one of its "most significant

(footnote continued on following page)

The record specifically shows that, in order to complete local calls, PSPs must provide for many functions in addition to those used by carriers whose customers use payphones to initiate 800 subscriber and access code calls. These include the costs of local switching, call completion to the terminating party, central office (or payphone)-based coin rating functions, coin collection costs and the unique costs associated with coin fraud. The Order not only ignores these undisputed facts, it does not even acknowledge that these arguments were made in the comments.[12] The Commission is thus obliged to reconsider its decision in light of these undisputed facts and find that a "market" rate for local coin calls is not an appropriate surrogate for per-call compensation.

Furthermore, even if the cost of providing local coin service were similar to the cost of originating non-coin calls (and it is not), there is no basis to find that the $.35 rate used in establishing both the interim compensation level and the "default" compensation amount for the first year of per-call compensation is a reasonable surrogate for per-call compensation. The only evidence supporting this figure is that $.35 is the "market" rate for unregulated local

---

(footnote continued from previous page)

costs" (Peoples Comments, pp. 21-22) with AT&T's average monthly costs of $23.28 for "Maintenance/warehouse/parts/staff" (AT&T Reply, p. 8) for its coinless phones.

12 See Order, ¶ 46 (noting only that some commenters argued that "local coin rates are kept artificially low by regulators and have no relationship to either cost or the market," not that there was record evidence showing that the specific costs associated local coin calls are different from the costs associated with non-coin calls). This is a clear violation of Section 1.425 of the Commission's Rules, which requires the Commission to "consider all relevant comments and material of record before taking final action in a rulemaking proceeding."

coin service in four smaller states (Iowa, Nebraska, North Dakota and Wyoming), which together account for only about 2% of all payphones in service. There is no showing of what a "market" rate for local calls would be for the vast majority of phones that are not located in those states.[13]

The Order further ignores that, even by the RBOC Coalition's estimates, its members' average cost for providing payphone access for all types of calls -- including coin calls -- "ranges from $.25 to $.32."[14] These amounts, which are based on an undescribed "fully embedded asset base," not only include all of the RBOCs' costs for providing coin services but also an unstated "reasonable" rate of return and marketing costs the RBOCs incur to promote the use of their payphones for local calls. Thus, the $.35 compensation amount adopted by the Order necessarily and substantially overstates the amount of "fair" per-call compensation that should be assessed on carriers and consumers for non-coin 800 subscriber and access code calls.

The Order's assumption (¶ 49) that the market could effectively set a "fair" rate for per-call compensation is also unfounded, especially if the compensation amount is based on the local coin rate. There is no reason to expect that consumers will ever see effective price competition among PSPs for local coin rates, yet without such competition the rates for local coin calls could never be "market-based." Virtually all coin phones are placed on the premises

---

13 The Order also ignores, without explanation, the fact that the prevailing rate in a fifth state with "market-based" local coin rates is $.25.

14 See RBOC Coalition Comments, n.15; AT&T Reply, p. 4-6.

of a third party -- a location owner -- that receives revenue in return for allowing the PSP to place phones on its premises. Both the PSP and the location owner have an economic interest in maintaining the exclusivity of the coin phone placements, because it maximizes the revenue potentials for each.[15] This assures that consumers will not find coin phones provided by multiple PSPs at a single premises, which is necessary to assure a "market-based" competitive price for local coin calls.[16] Thus, contrary to the Order's assumption (¶ 61), "locational monopolies" are the rule rather than the exception for coin phones, and they preclude the existence of a "market-based" competitive price for local coin calls.

There is also no likelihood that non-presubscribed carriers can exert significant market pressure on PSPs. The Order fails to recognize, for example, that TOCSIA requires OSPs to establish 800 or 950 number access codes, which prevent them from lawfully blocking such calls from payphones. The Order also ignores record evidence that carriers cannot technically or practicably block individual 800 subscriber or access code calls from payphones.[17]

---

[15] In particular, a PSP is likely to pay a lower commission rate to a location owner if it cannot have the exclusive right to place coin phones at a particular premises.

[16] The lack of competition for local coin traffic is in sharp contrast to the high level of price competition among OSPs -- all of whom may be accessed from every payphone.

[17] See AT&T Reply, n.8 (noting that "in most cases carriers, including AT&T, cannot recognize in real time that a call is being placed from a 'high priced' payphone, which is necessary for a carrier to implement blocking procedures," and "[t]hat this is especially true for calls to 800 subscriber numbers"). Thus, even if carriers' tracking systems could generally block all payphone calls dialed to an 800 service customer, the 800 customer would have to order such blocking on an "all or nothing" basis. The customer could not agree to accept calls from payphones that charge a specific amount but reject calls from

(footnote continued on following page)

Further, the Order's assumption that there could be "a willing seller [PSP] and a willing buyer [carrier/customer] at a price agreeable to both," is fundamentally flawed. Indeed, it is impossible to develop a unitary "market" price that would be applicable to both access code and 800 subscriber calls.[18] The record shows that carriers' charges for 800 subscriber calls -- which appear to be a majority of the calls that would be covered by per-call compensation -- are only about one-fifth of their charges for access code calls.[19] Given the wide differential in revenues, no rational market would assign the same value to payphone access for 800 subscriber calls and for access code calls. In contrast, under a cost-based approach, it would be reasonable to assign a constant rate for per-call compensation, as long as the costs of providing payphone access are similar for the various types of compensable calls -- which the record shows they are. Accordingly, the only "fair" compensation amount is one that is based on the PSPs' costs for making payphone access available, just as the Notice originally proposed.

C. The Permanent Per-Call Compensation Rules are Unadministrable and Will Subject Carriers and Consumers to Significant Abuses.

(footnote continued from previous page)

payphones that would charge more. Thus, the market could not effectively exercise pricing discipline over PSP payphone charges.

18 The Order (¶ 39) notes that AT&T and other commenters requested that the Commission adopt a national uniform rate for per-call compensation. AT&T's request, however, was premised on the assumption that per-call compensation would, as the Commission had tentatively concluded, be based on PSPs' costs. Application of a "market" rate, in contrast, requires a substantially different analysis and demands a different conclusion.

19 See, e.g., AT&T Reply, p. 11; August 22, 1996 letter from Robert H. Castellano, AT&T to William F. Caton, CC Docket No. 96-128.

Because there is no effective "market" that would lead to a uniform per-call compensation rate, the Commission's goal of simplicity in the administration of per-call compensation is unattainable, especially under a rule that sets the permanent default rate for per-call compensation as a "rate equal to [the PSP's] local coin rate at the payphone in question."[20] This rule not only makes per-call compensation unadministrable, it also subjects carriers and consumers to substantial abuses.

There is no reason to expect that "market" rates for local coin calls will drive all PSPs to charge the same rate at all phones.[21] Indeed, rational PSPs will seek to charge the highest amount that consumers are willing to pay for local coin calls from a specific location, irrespective of the costs of providing such calls. Thus, while the market will drive all PSPs to charge rates that at least recover the efficient TSLRIC costs of providing local coin services, there will be no cost-related ceiling on such rates. For example, it should be assumed that a rational market will generate higher prices for local coin calls in remote or monopoly locations than for similar calls in areas where consumers have more choices. Moreover, as long as the

---

20 See Order, Appx. E, Section 64.1300(c). Given the general lack of competition in the placement of payphones at individual locations, there is no reasonable prospect that a PSP would ever agree to a per-call compensation rate which is lower than the amount mandated in the Commission's Rules. Thus, the "default" rate will, for all practical purposes, be the effective rate for per-call compensation (see Ameritech Comments, n.5).

21 There is no evidence that the price for local coin calls in the states with deregulated local coin rates is completely uniform at all payphones in those states. Indeed, the Iowa Utilities Board (Comments, p. 3) merely stated that $.35 is the rate at the "majority of Iowa payphones." Moreover, to the extent that a PSP has decided for business reasons to adopt a uniform rate, the current Order makes it equally possible for the PSP to charge a different rate at any phone.

rules permit PSPs to collect the equivalent of the local coin rate from carriers for 800 subscriber and access code calls, PSPs will be indifferent to whether they ever collect a penny in coins for local calls. Thus, the rules give PSPs substantial incentives to manipulate the traffic at their payphones to the detriment of carriers, and of course, ultimately of consumers.

Under the Commission's proposal, PSPs may also change their local coin rates at will.[22] This makes it impossible for carriers to operate a verifiable per-call compensation system. Even if carriers could track all 800 subscriber and access code calls from a specific payphone, they could not verify the rate for the use of that phone. In such circumstances, carriers will have no adequate means of determining the actual rates charged for local coin calls over the same period, or of determining whether they are being overcharged for per-call compensation. In contrast, a TSLRIC-based (or other forward-looking cost-based) rate could establish a fixed amount that carriers must pay for all non-coin calls, which would facilitate, and lower the costs of, administration for per-call compensation.

II. The Interim Compensation Rules Unlawfully Exclude LECs and Small IXCs from the Duty to Pay Compensation and Unreasonably Require Interim Compensation for Low Usage Payphones and Semi-Public Phones.

The Order's interim compensation rules provide that all such compensation must be paid exclusively by larger IXCs. These rules must be reconsidered and amended because they are contradictory to the statute's requirements, inconsistent with the Order's own rationale

22 The Order only requires PSPs to provide information about the charge for local calls to consumers who use the phone. This does not preclude a PSP from having a different rate at every phone, or even from having different rates at the same phone over the course of a compensation period. Indeed, a PSP could even charge different rates for coin calls at different times of day, as long as those rates are posted at the phone.

and unfair and discriminatory to the selected IXCs. Moreover, the rules as adopted are arbitrary and will substantially and uneconomically skew monetary incentives for PSPs.

The Order (¶ 119) acknowledges that the requirement that only certain IXCs contribute to the interim phase of per-call compensation derives from the Commission's practices with respect to dial-around compensation under TOCSIA. However, Section 276 specifically requires the Commission to establish a plan that provides PSPs with compensation for "each and every completed interstate and intrastate call" from payphones (emphasis added). Thus, unlike TOCSIA, the 1996 Act provides no exceptions for any carrier whose customers use payphones. Indeed, the Order itself (id.) quotes the above statutory language as the basis for including resellers among the carriers that must contribute to the interim compensation payments, noting that "Section 276 is the statutory authority for mandating per-call compensation for all compensable calls," which clearly include intraLATA toll and intraLATA subscriber 800 services. Thus, all carriers, large and small, are obliged to pay compensation, and no carrier should be required to pay for calls handled by other carriers. Thus, the exclusion of LECs and small IXCs from the interim payment obligation is contrary to the statute and inconsistent with the Order's own logic.

Exclusion of the LECs is especially unwarranted, because they generate billions of dollars annually in intraLATA 800 subscriber and intraLATA toll revenues. The Order provides no reasonable explanation for excluding the LECs from sharing in the interim payment obligation proportionally with other carriers.[23] Similarly, since the interim payment

[23] Even the RBOC Coalition (Reply, n.2) agrees that LECs should be required to pay per-call compensation on the intraLATA toll calls they carry. Moreover, the Order stands in

(footnote continued on following page)

obligation is not related to any tracking of actual calls placed from payphones, there is no statutory (or logical) basis for excluding <u>any</u> carrier (LEC or IXC) that provides either 800 subscriber or access code calling services from such phones.

In addition, the record shows that there are hundreds of thousands of semi-public and public interest payphones, which, by their nature, generate low revenues, and even more "ordinary" public phones that generate relatively few calls.[24] It is unreasonable to expect that these phones produce any significant amount of traffic for carriers. In contrast to the relatively modest $6.00 per month obligation that was imposed with respect to interstate dial-around calls, a $40.00 increase in monthly compensation can only serve to provide uneconomic incentives for PSPs to install new -- and otherwise unnecessary -- payphones for the sole purpose of obtaining interim compensation. Accordingly, the Commission should

---

(footnote continued from previous page)

stark contrast to the Common Carrier Bureau's efforts last year to allocate the diminishing supply of 800 numbers among all toll-free service providers -- including LECs, whom the Bureau recognized were active participants in the toll-free business (<u>see</u>, <u>e.g.</u>, letter from Kathleen M. H. Wallman, Chief, Common Carrier Bureau to Michael Bennett, Director, Federal Regulatory, Southwestern Bell, dated October 6, 1995 (regarding the 800 number allocation plan)). <u>See also</u> APCC Comments, p. 37 (BOCs and LECs are substantial participants in the toll-free services market).

24 <u>See</u>, <u>e.g.</u>, August 15, 1996 letter from Michael K. Kellogg to William F. Caton, CC Docket No. 96-128 (showing that in five RBOC regions alone there are over 190,000 semi-public phones and more than 265,000 non-semi-public payphones "making less than $4 per day"). Moreover, LECs that install semi-public phones recover their costs by collecting revenues directly from location owners for placing such phones at the owners' premises. This eliminates the need for additional interim compensation, especially in the absence of any information that access code or 800 subscriber calls are actually placed from such phones.

reconsider its compensation rules and exclude interim compensation payments for semi-public and public interest phones, as well as for other payphones that the RBOC Coalition itself defined as low revenue phones, i.e., phones making less than $4 per day.

III. If the Commission Persists in Eschewing a Cost-Based Compensation System, the Payment Mechanism Must Be Modified to Provide a Semblance of Market Discipline Over the Compensation Rate.

The Order (¶ 83) adopts a "carrier pays" mechanism to implement per-call compensation. As stated in its comments (p. 12), AT&T believes that such a system would be reasonable -- but only if per-call compensation is cost-based. In a cost-based system, carriers can reasonably treat payphone compensation as one of the external costs they must incur and recoup in their rates.[25] Under a "market-based" system, however, the charges for using a payphone will vary considerably from phone to phone, and payphone users -- the actual cost causers -- may or may not be willing to absorb a PSP's charges, depending upon the rate offered by the PSP.

Accordingly, if the Commission insists upon applying a "market-based" approach to per-call compensation, carriers should not be placed in the middle between the competing economic interests of the PSP suppliers and customer users. Moreover, a market-based system requires that cost-causers (here the customers) have pertinent information about the costs they will be responsible for. APCC (Comments, p. 23) agrees that "in principle, a 'set use fee' would most effectively implement the Commission's policy of placing costs on the

[25] The Order (¶ 83) assumes that carriers will pass the costs of payphone compensation on to their customers.

cost causer." In contrast, a carrier-pays system does not allow the cost information to be communicated directly to the cost-causers. Indeed, it effectively hides the amount of payphone compensation from the customers who must ultimately pay them.[26] This precludes the possibility that customers can exercise any effective market discipline over PSPs' charges for using their equipment.

The most effective way to assure that consumers understand the costs associated with their decision to use a payphone is to require them to pay the PSP directly through a payphone coin charge at the phone itself.[27] This removes carriers from the decision of whether a customer wants to pay the costs of making (or accepting) calls from payphones, and it is also the only way of ensuring that payphone users are aware of the costs they are causing.[28]

AT&T recognizes, however, that a "coin in the box" system could create inconvenience for many consumers. Therefore, if the Commission determines not to assess payphone usage charges directly at the phone, it should adopt a payment mechanism that

---

[26] See October 16, 1996 letter from Reginald Bernard, SDN Users Association, to Regina Keeney, Chief, Common Carrier Bureau, CC Docket No 96-128.

[27] Because of the mandates of TOCSIA (Section 226(c)(1)(C) of the Communications Act), any charge a PSP imposes on users who dial access codes must also be imposed on customers who place calls using the primary operator services provider for the payphone. Thus, a "coin in the box" system must apply equally to all calls made using the phone. This is not only a requirement of fundamental fairness, it is necessary to prevent PSPs from obtaining insuperable economic advantages for its preferred carrier.

[28] This is similar to the choice hotel guests have regarding their use of room telephones, which typically require the payment of an identified equipment use charge assessed by the property owner.

applies directly to access code callers and 800 subscribers, modeled on the Pay Station Service Charge adopted for intraLATA access code calls in California.[29] Under such a system, carriers would be responsible, as agents for PSPs (but not in their own right), to collect a specified charge for use of the PSPs' payphones. Carriers would track payphone usage by their customers, bill and collect payphone usage charges on behalf of the PSPs, and remit the proceeds to PSPs, less reasonable billing and collection costs.[30] Under these conditions, customers would have an opportunity to review the payphone usage charges and respond through appropriate marketplace actions.[31] Since these customers -- and not carriers -- ultimately are the parties that benefit from the use of payphones, pay station service charges assessed by PSPs and billed by carriers on their behalf at least provide the possibility that the market can take account of the economic interests of all interested parties.[32]

---

[29] See California Payphone Association Comments, pp. 4-8.

[30] In California, AT&T collects $.25 per call and retains $.04 as a billing and collection expense. The RBOC Coalition (Comments, p. 6) urges the Commission to grandfather existing systems like the one in California, even if it otherwise generally adopts a "carrier pays" system. Requiring the industry to maintain a dual system, however, would be impractical. Under a market-based compensation system, the California approach (or a coin in the box charge) should be employed nationally.

[31] In order to give customers real-time information, payphone usage charges should also be disclosed by the PSP on prominent signs at the phone.

[32] These changes would also obviate the need for facilities-based carriers to pay per-call compensation on behalf of resellers (see Order, ¶ 83). This is appropriate, because the statute only requires compensation for completed calls (id., ¶ 63), and facilities-based carriers may not know if a reseller's calls are completed, especially with respect to resellers that provide partial facilities-based services or that use the services of multiple carriers to complete their calls. Facilities-based carriers should, however, be required to pass pertinent call tracking information on to resellers, who could then be responsible for making the direct payments to PSPs.

(footnote continued on following page)

Finally, the Order incorrectly assumes that IXCs could generally pass the newly-imposed payphone costs on to their customers. In fact, some customers, particularly large 800 service subscribers, receive service under contracts that prohibit IXCs from raising their prices during the contract term, absent Commission action. This could preclude carriers from collecting the new payphone costs from the direct cost-causers. A PSP payphone usage charge imposed on 800 subscribers (or a coin charge imposed on callers) would resolve this difficulty by placing the customer beneficiaries of payphone use in a direct relationship with the PSP.[33]

IV. Other Issues Requiring Clarification

In addition to the issues above, several other aspects of the Order require clarification.

(footnote continued from previous page)

Even if the Commission does not change its collection and payment system, however, it should not require facilities-based carriers to pay per-call compensation on behalf of resellers. The Commission's rules unreasonably require facilities-based IXCs to become the guarantors to the payphone industry for charges that are ultimately owed by resellers and their customers. IXCs have already incurred hundreds of millions of dollars in losses caused by thinly capitalized resellers' failure to pay their bills. There is no basis to burden IXCs further with the financial responsibility that resellers owe to PSPs for the benefits they and their customers receive from the use of payphones.

[33] If the Commission continues to eschew a market-based approach to per-call compensation and also declines to modify the Order's collection and payment rules, it should expressly find that the imposition payphone costs on IXCs constitutes "substantial cause" for carriers to modify their existing tariffs and contracts, so carriers can recover their increased costs from the cost causers.